

## FROM THE COMMITTEE ON MODEL CIVIL JURY INSTRUCTIONS

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The Committee solicits comment on the following proposal by June 1, 2010. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30104, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

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### PROPOSED

#### [AMENDED] M Civ JI 170.41 Will Contests: Mental Capacity—Definition

#### M Civ JI 170.41 WILL CONTESTS: MENTAL CAPACITY—DEFINITION

A decedent had sufficient mental capacity to make a will if at the time [he / she] made the document [he / she] ~~had—~~

- a. ~~had~~ the ability to understand that [he / she] was providing for the disposition of [his / her] property after [his / her] death, and
- b. ~~had~~ the ability to know the nature and extent of [his / her] property, and
- c. ~~the ability to know~~ knew the natural objects of [his / her] bounty, and
- d. ~~had~~ the ability to ~~know the~~ understand in a reasonable manner in which the document disposed of [his / her] property the general nature and effect of [  
his/her ] act in signing the will.

The contestant has the burden of proving that at the time the decedent made the document [he / she] did not have sufficient mental capacity to make a will.

#### *Comment*

~~*In re Sprenger's Estate*, 337 Mich 514; 60 NW2d 436 (1953); *In re Carmas' Estate*, 327 Mich 235; 41 NW2d 355 (1950); and *In re Walker's Estate*, 270 Mich 33; 258 NW 206 (1935), define the requirements of testamentary capacity.~~

The statutory presumption of mental competency of the decedent to make a will, [MCL 600.2152](#), has been construed to place on the contestant the burden of proving by a preponderance of the evidence that the decedent lacked testamentary capacity. *In re Hallitt's Estate*, 324 Mich 654; 37 NW2d 662 (1949); *In re Paul's Estate*, 289 Mich 452; 286 NW 680 (1939).

~~An early case referred to blood relations as the natural objects of one's bounty, *Spratt v Spratt*, 76 Mich 384; 43 NW 627 (1889), while more recent cases refer to "relatives." *In re Sprenger's Estate*; *In re Walker's Estate*.~~

MCL 700.2501 was amended effective April 1, 2010. The prior provision only stated that an individual be of sound mind. The amended statute draws a distinction between an ability to know or understand in subsections (2)(A),(B), and (D) and actual knowledge in subsection (2)(C).

### *History*

M Civ JI 170.41 was added January 1984.  
Amended \_\_\_\_\_.

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The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.516(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

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**Reporter:** Timothy J. Raubinger

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